

No. WR-59,552-03

IN THE COURT OF CRIMINAL APPEALS OF TEXAS RECEIVED
IN AUSTIN, TEXAS COURT OF CRIMINAL APPEALS
10/17/2019
DEANA WILLIAMSON, CLERK

In re Ruben Gutierrez,
Relator,

v.

The Honorable Benjamin Euresti, Jr.,
107th District Court
Cameron County, Texas,
Respondent.

**RELATOR'S RESPONSE TO 107TH JUDICIAL DISTRICT COURT'S
FILING OF COPIES OF MULTIPLE WARRANTS IN RESPONSE TO
THIS COURT'S OCTOBER 11, 2019, ORDER**

This is a capital case.
Mr. Gutierrez is scheduled to be executed
Wednesday, October 30, 2019.

Peter Walker
Assistant Federal Defender
Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 545 West, The Curtis
601 Walnut Street
Philadelphia, PA 19106
(215) 928-0520
peter_walker@fd.org

Richard W. Rogers, III
3636 S. Alameda, Ste. B, #191
Corpus Christi, TX 78411
(361) 888-7620
rwrogersiii@aol.com

Counsel for Relator

IDENTITY OF PARTIES AND COUNSEL

Relator:

Ruben Gutierrez

Counsel for Relator Ruben Gutierrez:

Peter Walker
Assistant Federal Defender
Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 545 West, The Curtis
601 Walnut Street
Philadelphia, PA 19106
(215) 928-0520
peter_walker@fd.org

Richard W. Rogers, III
3636 S. Alameda St., Ste. B, #191
Corpus Christi, TX 78411
(361) 888-7620
rwrogersiii@aol.com

Respondent:

The Honorable Benjamin Euresti, Jr.
107th District Court
974 E. Harrison St.
Brownsville, TX 78520
(956) 544-0845 (t)
(956) 544-0803 (f)

Real Party in Interest:

State of Texas

Counsel for the Real Party in Interest/State:

Luis V. Saenz
Cameron County District Attorney
964 E. Harrison Street
Brownsville, TX 78520

RESPONSE TO COURT’S OCTOBER 16, 2019, FILING

On October 16, 2019, the 107th District Court responded to this Court’s October 11, 2019, Order requesting “a copy of the Warrant of Execution issued by the clerk and delivered to the Sheriff of Cameron County.” The response is in the form of a twelve-page PDF file. On page 6 of the PDF is a document that Relator’s counsel has never before seen, titled “DEATH WARRANT (WARRANT OF EXECUTION) – CCP 43.15” (hereinafter “Death Warrant”). On pages 8–9 of the PDF is another document, previously sent to Relator, titled “WARRANT OF EXECUTION” (hereinafter “Warrant of Execution”). The “Death Warrant” bears the seal of the court, but there is no seal of the court on the “Warrant of Execution.” The “Death Warrant” twice calls for Relator’s execution “before the hour of sunrise on the 30th day of October, 2019,” and also names the wrong date of conviction. The “Warrant of Execution” has the correct date of conviction and calls for Relator’s execution “on October 30, 2019 at any time after the hour of 6:00 P.M.,” which is when the Order Setting Execution Date sets the execution.

This Court asked Respondent “to provide this Court with a copy of the Warrant of Execution issued by the clerk and delivered to the Sheriff of Cameron County and tell us whether the warrant issued with the required seal of the court affixed.” The “Warrant of Execution” delivered to the Sheriff does not bear the seal of the court. The “Death Warrant” does. The copy of the “Warrant of Execution” received by

Relator's counsel, on the other hand, does bear the seal of the court on its face.

As noted, the "Death Warrant" bears the seal of the court but names the wrong date of conviction—May 12, 1999, instead of April 15, 1999—and calls for execution before sunrise on October 30, 2019. The "Warrant of Execution" has the correct date of conviction and calls for execution after 6:00 P.M. on October 30, 2019. In other words, the "Death Warrant" and the "Warrant of Execution" are contradictory. Relator cannot possibly be executed both before sunrise and after 6:00 P.M. on the same day. If TDCJ were to execute Relator after 6:00 P.M., it would be acting unlawfully because the "Warrant of Execution" delivered to the Sheriff and delivered by the Sheriff to TDCJ did not bear the seal of the court, as required by Article 43.15; if TDCJ were to execute Relator before sunrise, it would be acting unlawfully both because the "Death Warrant" was not sent at the time it issued to counsel for Relator and OCFW, as required by Article 43.15, and because executions must occur "at any time after the hour of 6 p.m. on the day set for the execution," Tex. Code Crim. Proc. Ann. art. 43.14 (West).

Furthermore, the Order Setting Execution Date (page 10 of the PDF) says, "Within 10 days of the signing of this Order, the Clerk of this Court shall issue and deliver to the Sheriff of Cameron County, Texas, a Warrant of Execution" The Order Setting Execution Date was entered June 27, 2019. The Sheriff's Return (page 12 of the PDF) shows that it was delivered to the Sheriff on July 9, 2019—twelve

days after the Order Setting Execution Date was entered. The warrant thus violates the 107th District Court's own Order Setting Execution Date, as it was delivered two days late. And Article 43.15 mandates delivery of the warrant to the sheriff "not later than the 10th day after the court enters its order setting the date for execution."

In addition, as explained in Relator's prior submission, the copy of the "Warrant of Execution" (without the "Death Warrant") filed in this Court on October 15, 2019, by the District Attorney, was sent directly to TDCJ and not to the Sheriff as required by Article 43.15; and, as explained in Relator's application for a writ of mandamus, the clerk never sent a copy of the warrant with "the required seal of the court affixed" to OCFW.

Because of these many failures to comply with statutory warrant requirements, the warrant issued June 28, 2019, is void and should be recalled.

PRAYER FOR RELIEF

Relator asks that when the State seeks to execute him, all mandatory laws be complied with. Here, the requirements of Article 43.15 were not met.

Mr. Gutierrez has no remedy at law other than his petition for mandamus. Accordingly, he respectfully requests that this Court grant mandamus relief ordering the district court to recall the Warrant for being void under Article 43.15.

Respectfully Submitted,

/s/ Peter Walker
Peter Walker
Assistant Federal Defender
Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 545 West, The Curtis
601 Walnut Street
Philadelphia, PA 19106
(215) 928-0520
peter_walker@fd.org

/s/ Richard W. Rogers, III
Richard W. Rogers, III
3636 S. Alameda, Ste. B, #191
Corpus Christi, TX 78411
(361) 888-7620
rwrogersiii@aol.com

Dated: Oct. 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2019, I have caused a true and correct copy of the foregoing pleading to be served by the e-filing system on: Mr. Edward A. Sandoval, Assistant District Attorney, Cameron County District Attorney's Office.

/s/ Peter Walker
Peter Walker